

Message Text

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ACTION EUR-12

INFO OCT-01 IO-10 ISO-00 AID-05 CEA-01 CIAE-00 COME-00

EB-07 EA-06 FRB-03 INR-07 NEA-09 NSAE-00 OPIC-03

SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 OMB-01 L-02 STR-04

DOT-00 FAA-00 CAB-02 DODE-00 FMC-01 CG-00 DLOS-03

OFA-01 /086 W

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R 211834Z APR 75

FM USMISSION OECD PARIS

TO SECSTATE WASH DC 6671

INFO AMCONSUL MONTREAL

USMISSION GENEVA

USMISSION USUN

USMISSION EC BRUSSELS

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PASS MONTREAL FOR U.S. REP ICAO, PASS TO WILLIS

E.O.11652: N/A

TAGS: EFIN, OECD

SUBJ: SECOND EXCOM MEETING ON UN LINER CODE OF CONDUCT, APR 24

REFS: (A) STATE 86470

(B) USOECD 9244

1. BEGIN SUMMARY. OECD LEGAL ADVISER INFORMS US THAT UNCTAD AND UN LEGAL OFFICES DO NOT, REPEAT NOT, WANT TO GET INVOLVED IN CLARIFICATION OF UN LINER CODE. SECRETARIAT HAS CIRCULATED DRAFT MANDATE FOR AD HOC LEGAL GROUP WITHIN OECD (TRANSMITTED PARA 5 BELOW). ACTION REQUESTED: COMMENTS ON POINTS RAISED PARA 4 BELOW AND ANY FURTHER INSTRUCTIONS FOR EXCOM MEETING APRIL 24. END SUMMARY.

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2. MISSION HAS DISCUSSED PROSPECTS FOR REFERRING UN
LINER CODE ISSUE TO AN APPROPRIATE BODY OF UNITED
NATIONS FOR CLARIFICATION AND HAS BEEN INFORMED BY OECD
LEGAL OFFICE (DICK SCOTT) THAT BOTH UNCTAD LEGAL
ADVISER'S OFFICE AND UN LEGAL COUNCIL HAVE INDICATED
STRONG RESERVATIONS TO BEING INVOLVED IN THIS QUESTION.
SCOTT SAID THAT BOTH UNCTAD AND UN LEGAL OFFICES WERE
VERY RELUCTANT TO GIVE AN OPINION ON AN ISSUE WHICH
PROMISED TO BE CONTENTIOUS BETWEEN MEMBER STATES OF UN.
SCOTT THINKS THAT REFERENCE TO UN IS "A DEAD HORSE,"
AND HE WOULD PREFER NOT TO REPORT TO EXCOM ON RESULTS
OF HIS INQUIRIES, LETTING MATTER QUIETLY DROP FROM SIGHT.

3. SCOTT ADDED, HOWEVER, THAT INDIVIDUAL COUNTRIES
COULD RAISE QUESTION OF CLARIFICATION IN APPROPRIATE
PLENARY COMMITTEES OF UN, BUT HE DID NOT KNOW MECHANICS
OF SUCH PROCEDURE AND COULD NOT ESTIMATE THEIR CHANCES
OF SUCCESS. HE ORIGINALLY HAD ANTICIPATED THAT QUESTIONS
TO UN MIGHT BE FORMULATED BY PROPOSED AD HOC WORKING
GROUP IF SUCH GROUP WERE TO BE ESTABLISHED WITHIN OECD.
HE NOTED THAT ANY LEGAL OPINION OBTAINED FROM UN WOULD
NOT BE AUTHORITATIVE OR BINDING, BUT STRICTLY INFORMA-
TIONAL. IF COUNTRIES WANTED AN AUTHORITATIVE OPINION,
THEY WOULD HAVE TO ASK WORLD COURT FOR ITS ADVICE, BUT
THIS WOULD HAVE TO BE INITIATED VIA UNCTAD OR UN GENERAL
ASSEMBLY.

4. MISSION WOULD APPRECIATE FURTHER SPECIFICS FROM
DEPARTMENT AND/OR USUN ON MECHANICS OF REFERENCE BY
OECD (OR BY INDIVIDUAL MEMBER COUNTRIES) TO AN APPRO-
PRIATE UN COMMITTEE. WE UNDERSTAND IT MIGHT BE POSSIBLE
FOR SUCH UN COMMITTEE TO REQUEST AN OPINION FROM UN
LEGAL COUNCIL. IN VIEW OF OECD LEGAL ADVISER'S INQUIRIES
TO UNCTAD AND UN LEGAL OFFICES AND THEIR NEGATIVE
REACTION, WE WILL NEED FURTHER SUGGESTIONS PRIOR TO
EXCOM MEETING IF WE ARE TO HAVE ANY SUCCESS IN REFERRING
THIS ISSUE TO UNITED NATIONS. IN EVENT THAT PRACTICAL
FORMAT FOR REFERENCE TO UN CANNOT BE SUGGESTED, WE WILL
- UNLESS OTHERWISE INSTRUCTED - GIVE OUR SUPPORT
TO U.K. PROPOSAL IN ORDER TO AVOID DIFFERENCES OF
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OPINION BETWEEN LIKE-MINDED COUNTRIES. WE WILL ALSO
NOT PRESS OECD LEGAL ADVISER FOR REPORT ON RESULTS OF
HIS INQUIRIES UNLESS OTHER COUNTRIES RAISE IT.

5. PROPOSED MANDATE FOR AD HOC WORKING PARTY PREPARED
BY OECD LEGAL OFFICE FOR CONSIDERATION AT EXCOM ON
APRIL 24 IS AS FOLLOWS:

BEGIN TEXT

THE EXECUTIVE COMMITTEE,

HAVING REGARD TO THE RESOLUTION OF THE COUNCIL OF
27TH JUNE, 1974 CONCERNING THE PROPOSED UNITED NATIONS
CONVENTION ON A CODE OF CONDUCT FOR LINER CONFERENCES
AND MEMBER COUNTRIES' COMMITMENTS IN THE FIELD OF MARI-
TIME TRANSPORT UNDER THE CODE OF LIBERALISATION OF
CURRENT INVISIBLE OPERATIONS (C/M(74)17(FINAL))

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ITEM 175(A) TO (F));

HAVING REGARD TO THE REPORT BY THE COMMITTEE FOR

INVISIBLE TRANSACTIONS OF 3RD DECEMBER, 1974 CONCERNING
THE COMPATIBILITY OF THE UNITED NATIONS CONVENTION ON A
CODE OF CONDUCT FOR LINER CONFERENCES AND THE OECD CODE
OF LIBERALISATION OF CURRENT INVISIBLE OPERATIONS
(C(74)235);

HAVING REGARD TO THE COMMENTS BY THE PAYMENTS
COMMITTEE OF 3RD APRIL, 1975 ON THAT REPORT (C(75)1);

HAVING REGARD TO THE RULES OF PROCEDURE OF THE
ORGANISATION AND, IN PARTICULAR, TO RULES 21(B) AND
25(A) THEREOF;
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NOTING THAT THE COMMITTEE FOR INVISIBLE TRANSACTIONS
AND THE PAYMENTS COMMITTEE HAVE FOUND A DIVISION OF
VIEWS ON THE QUESTION OF COMPATIBILITY OF THE PROPOSED
UNITED NATIONS CONVENTION ON A CODE OF CONDUCT FOR
LINER CONFERENCES AND THE OECD CODE OF LIBERALISATION
OF CURRENT INVISIBLE OPERATIONS;

DECIDES:

1. AN AD HOC WORKING PARTY IS HEREBY ESTABLISHED TO
CONSIDER THE LEGAL COMPATIBILITY OF THE PROPOSED UNITED
NATIONS CONVENTION ON A CODE OF CONDUCT FOR LINER CON-
FERENCES AND THE OECD CODE OF LIBERALISATION OF CURRENT
INVISIBLE OPERATIONS.
2. THE WORKING PARTY WILL BE OPEN TO ALL INTERESTED
MEMBER COUNTRIES, WHICH SHOULD BE REPRESENTED BY LEGAL
ADVISERS FROM CAPITALS.
3. THE WORKING PARTY SHALL ELECT ITS OWN CHAIRMAN.
4. THE WORKING PARTY SHALL SUBMIT ITS REPORT IN TIME
FOR CONSIDERATION BY THE EXECUTIVE COMMITTEE NO LATER
THAN 15 JUNE 75.

END TEXT
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Margaret P. Grafeld
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EO Systematic Review
05 JUL 2006

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